

ORIGINAL

FILED

August 10 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 10-0097

LARRY DIMARZIO,

Appellant,

vs

CRAZY MOUNTAIN CONSTRUCTION, INC.
a Montana corporation, F.L. DYE COMPANY, a
Montana corporation, BRIDGER GLASS &
WINDOWS, INC, a Montana corporation,

Appellees..

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STATE OF MONTANA

**APPELLANT LARRY DIMARZIO'S UNOPPOSED
MOTION FOR LEAVE TO FILE OVER-LENGTH BRIEF TO
COMBINED REPLIES AND ANSWER TO CROSS CLAIMS**

On Appeal from the Montana Eighteenth Judicial District Court, Gallatin County

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The above named Appellant Larry DiMarzio ("DiMarzio") hereby moves the Court for leave to file an enlarged brief in connection with its combined Reply and Answers to the Cross Appeals in this matter. Pursuant to Rule 11(4) M.R.App.P., an Appellant has 14 pages or 5,000 words within which to state its reply and answer any cross appeals. DiMarzio respectfully requests that it be granted leave to file an over-length brief of up to 10,000 words and 30 page to state its combined replies and answers to cross appeals in this matter.

DiMarzio moves for such relief pursuant to Rule 12(10) M.R.App.P. and it is supported by the attached Affidavit. In summary, the grounds for the request are:

1. Appellees, Crazy Mountain Construction, Inc. ("CMC") and F.L. Dye Company ("Dye"), have each filed separate Answer briefs and identified separate issues on Cross Appeals. DiMarzio must respond to two parties, as opposed to one.
2. In order to properly address both Answer briefs in its Reply and the separate issues on Cross Appeal raised by CMC on the one hand and Dye on the other, DiMarzio believes the request to expand the word/page limit is needed and reasonable.

DiMarzio does not know, at this stage, if he will need the full 10, 000 words or 30 pages, but the brief will likely exceed the 5,000 words/ 14 pages allowed in Rule 11(4) M.R.App.P. However, in order to protect his ability to articulate his position on all issues and in order to avoid a last minute request, DiMarzio moves now for the extra space word/page limit.

DiMarzio has contacted counsel for both CMC and Dye and neither objects to the request to file an over-length brief as set forth herein. A proposed Order is filed together with this Motion.

Dated this 9th day of August, 2010.

CASTING, KAUFFMAN & MERSEN, P.C.

By: 

John M. Kauffman, Esq.

Attorney for Appellant, Larry DiMarzio

CERTIFICATE OF MAILING

The undersigned hereby certifies that on August 9th 2010, a true and correct copy of the foregoing **APPELLANT LARRY DIMARZIO'S UNOPPOSED MOTION FOR LEAVE TO FILE OVER-LENGTH BRIEF**, was mailed, by U.S. Mail, postage prepaid, to the following counsel of record:

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By: 

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. DA 10-0097

LARRY DIMARZIO,

Appellant,

vs

CRAZY MOUNTAIN CONSTRUCTION, INC.
a Montana corporation, F.L. DYE COMPANY, a
Montana corporation, BRIDGER GLASS &
WINDOWS, INC, a Montana corporation,

Appellees..

**AFFIDAVIT OF JOHN M. KAUFFMAN
IN SUPPORT OF
APPELLANT LARRY DIMARZIO'S UNOPPOSED
MOTION FOR LEAVE TO FILE OVER-LENGTH BRIEF TO
COMBINED REPLIES AND ANSWER TO CROSS CLAIMS**

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Attorneys for F.L. Dye Company

I, John M. Kauffman, being duly sworn, state as follows:

1. I am over the age of 18 and have personal knowledge of the matters set forth herein.
2. I am counsel of record for Appellant Larry DiMarzio ("DiMarzio") in the above-captioned appeal and was counsel of record for him at the trial level. I have been licensed to practice law in the State of Montana since 1993 and am in good standing.
3. On DiMarzio's behalf, I am herewith filing a Motion for Leave to File an Over-Length Brief to Combined Replies and Answer to Cross Claims.
4. Following DiMarzio's Opening Brief, Appellees Crazy Mountain Construction, Inc. and F.L. Dye Company each filed separate Answer Briefs and each filed separate issues for the Montana Supreme Court to consider as Cross Appeals.
5. Pursuant to Rules 11(4) and Rule 13(1) M.R.App.P., DiMarzio is permitted only 5,000 words or 14 pages to reply to both Answers and file an Answer to both parties Cross Claims.
6. After working on the Reply/Answer, I believe DiMarzio will need more space to properly reply to both CMC's and Dye's Answers and to file Answer the two cross claims filed by CMC and the one cross claim filed by Dye than is currently provided under Rule 11(4) M.R.App.P.
7. I have not finished writing the brief and it is not due for more than a week. Nevertheless, I am requesting that this Court grant DiMarzio up to 10,000 words or 30 pages for his combined Reply and Answer, with the understanding that I may not need all 10,000 words or 30 pages. I will, however, need more than the 5,000 words / 14 pages provided under Rule 11(4) M.R.Civ.P.
8. I am requesting this relief now in order to protect DiMarzio's ability to fully articulate his position on all issues and to avoid a last minute request to file an over-length brief.
9. I have contacted counsel for both CMC and Dye, and they do not object to the requested relief.

I certify under penalty of perjury that the foregoing is true and correct.

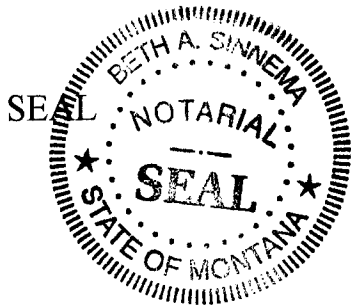
DATED this 9th day of August, 2010


JOHN M. KAUFFMAN

STATE OF MONTANA)
County of Gallatin) :ss

On this 9th day of August before me, a Notary Public in and for the State of Montana, personally appeared **John M. Kauffman** known to me to be the person whose name is subscribed to the foregoing Affidavit and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.



Beth A. Sinnema
Printed Name Beth A. Sinnema
Notary Public State of Montana
Residing at: Bozeman MT
My Commission expires 01-25-2011